

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOHN BONILLA, et al.,)
Plaintiff(s),) No. C05-4943 BZ
v.)
ANTIOCH PAVING CO. INC. and) ORDER SCHEDULING
RICHARD H. ALLISON,) COURT TRIAL AND
Defendant(s).) PRETRIAL MATTERS

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

1. DATES

Trial Date: Tuesday, 10/3/06, 8:30 a.m., 3 days

Pretrial Conference: Tuesday, 9/12/2006, 4:00 p.m.

Last Day to Hear Dispositive Motions: Wednesday, 8/16/2006

Last Day for Expert Discovery: Friday, 8/11/2006

Last Day for Expert Disclosure: Friday, 8/4/2006

Close of Non-expert Discovery: Friday, 7/25/2006

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1 2. DISCLOSURE AND DISCOVERY

2 The parties are reminded that a failure to voluntarily
3 disclose information pursuant to Federal Rule of Civil
4 Procedure 26(a) or to supplement disclosures or discovery
5 responses pursuant to Rule 26(e) may result in exclusionary
6 sanctions. Thirty days prior to the close of non-expert
7 discovery, lead counsel for each party shall serve and file a
8 certification that all supplementation has been completed.

9 In the event a discovery dispute arises, **lead counsel** for
10 each party shall meet in person or, if counsel are outside the
11 Bay Area, by telephone and make a good faith effort to resolve
12 their dispute. Exchanging letters or telephone messages about
13 the dispute is insufficient. The Court does not read
14 subsequent positioning letters; parties shall instead make a
15 contemporaneous record of their meeting using a tape recorder
16 or a court reporter.

17 In the event they cannot resolve their dispute, the
18 parties must participate in a telephone conference with the
19 Court **before** filing any discovery motions or other papers.
20 The party seeking discovery shall request a conference in a
21 letter served on all parties not exceeding two pages (with no
22 attachments) which briefly explains the nature of the action
23 and the issues in dispute. Other parties shall reply in
24 similar fashion within two days of receiving the letter
25 requesting the conference. The Court will contact the parties
26 to schedule the conference.

27 3. MOTIONS

28 Consult Civil Local Rules 7-1 through 7-5 and this

1 Court's standing orders regarding motion practice. Motions
2 for **summary judgment** shall be accompanied by a statement of
3 the material facts not in dispute supported by citations to
4 admissible evidence. The parties shall file a joint statement
5 of undisputed facts where possible. If the parties are unable
6 to reach complete agreement after meeting and conferring, they
7 shall file a joint statement of the undisputed facts about
8 which they do agree. Any party may then file a separate
9 statement of the additional facts that the party contends are
10 undisputed. A party who without substantial justification
11 contends that a fact is in dispute is subject to sanctions. A
12 Chambers copy of all briefs shall be submitted on a diskette
13 formatted in WordPerfect 6.1, 8, 9 or 10 (Windows) or
14 WordPerfect 5.1 (DOS).

15 4. MEDIATION

16 By agreement of the parties, this matter has been
17 referred for a Mediation to be conducted by the end of June
18 2006, if possible. The parties shall promptly notify the
19 Court whether the case is resolved at the Mediation.

20 5. SETTLEMENT

21 This case has been referred for assignment to a
22 Magistrate Judge to conduct a settlement conference in the
23 event the case is not resolved at the Early Neutral
24 Evaluation. Counsel will be contacted by that judge's
25 chambers with a date and time for the conference.

26 6. PRETRIAL CONFERENCE

27 Not less than thirty days prior to the date of the
28 pretrial conference, the parties shall meet and take all steps

1 necessary to fulfill the requirements of this Order.

2 Not less than twenty days prior to the pretrial
3 conference, the parties shall: (1) serve and file a joint
4 pretrial statement, containing the information listed in
5 **Attachment 1**, and a proposed pretrial order; (2) serve and
6 file trial briefs, Daubert motions, proposed findings of fact
7 and conclusions of law, and statements designating excerpts
8 from discovery that will be offered at trial (specifying the
9 witness and page and line references); (3) exchange exhibits,
10 agree on and number a joint set of exhibits and number
11 separately those exhibits to which the parties cannot agree;
12 (4) deliver all marked trial exhibits directly to the
13 courtroom clerk, Ms. Scott; (5) deliver one extra set of all
14 marked exhibits directly to Chambers; and (6) submit all
15 exhibits in three-ring binders. Each exhibit shall be marked
16 with an exhibit label as contained in **Attachment 2**. The
17 exhibits shall also be separated with correctly marked side
18 tabs so that they are easy to find.

19 No party shall be permitted to call any witness or offer
20 any exhibit in its case in chief that is not disclosed at
21 pretrial, without leave of Court and for good cause.

22 Lead trial counsel for each party shall meet and confer
23 in an effort to resolve all disputes regarding anticipated
24 testimony, witnesses and exhibits. All Daubert motions and
25 objections will be heard at the pretrial conference. Not less
26 than ten days prior to the pretrial conference, the parties
27 shall serve and file any objections to witnesses or exhibits
28 or to the qualifications of an expert witness. Daubert

1 motions shall be filed and served not less than twenty days
2 prior to the conference. Oppositions to Daubert motions shall
3 be filed and served not less than ten days prior to the
4 conference. There shall be no replies.

5 All motions and proposed findings of fact and conclusions
6 of law, and trial briefs shall be accompanied by a floppy
7 diskette containing a copy of the document formatted in
8 WordPerfect 6.1, 8, 9 or 10 (Windows) or WordPerfect 5.1
9 (DOS).

10 At the time of filing the original with the Clerk's
11 Office, two copies of all documents (but only one copy of the
12 exhibits) shall be delivered directly to Chambers (Room 15-
13 6688). Chambers' copies of all pretrial documents shall be
14 three-hole punched at the side, suitable for insertion into
15 standard, three-ring binders.

16 Dated: April 4, 2006



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18 Bernard Zimmerman
19 United States Magistrate Judge
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ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

- (A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.
- (B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

- (A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- (B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.
- (C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.
- (D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have made to resolve disputes over anticipated testimony, exhibits and witnesses.

- (A) Witnesses to be Called. In lieu of FRCP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.
- (B) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.
- (C) Use of Discovery Responses. In lieu of FRCP 26(a)(3)(B), cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, from interrogatory answers, or from responses to requests for admission. Counsel shall state any objections to use of these materials and that counsel has conferred respecting such objections.
- (D) Further Discovery or Motions. A statement of all remaining motions, including motions in limine.

(4) Trial Alternatives and Options.

- (A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.
- (C) Amendments, Dismissals. A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses.
- (D) Bifurcation, Separate Trial of

1 Issues. A statement of whether
2 bifurcation or a separate trial
3 of specific issues is feasible
4 and desired.

5 **(5) Miscellaneous.**

6 Any other subjects relevant to the trial of the action,
7 or material to its just, speedy and inexpensive determination.

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1 **ATTACHMENT 2**

2 **USDC**
3 Case No. CV05-04943 BZ
4 **JOINT** Exhibit No. _____
5 Date Entered _____

6 Signature _____
7 _____

8 **USDC**
9 Case No. CV05-04943 BZ
10 **JOINT** Exhibit No. _____
11 Date Entered _____

12 Signature _____
13 _____

14 **USDC**
15 Case No. CV05-04943 BZ
16 **PLNTF** Exhibit No. _____
17 Date Entered _____

18 Signature _____
19 _____

20 **USDC**
21 Case No. CV05-04943 BZ
22 **PLNTF** Exhibit No. _____
23 Date Entered _____

24 Signature _____
25 _____

26 **USDC**
27 Case No. CV05-04943 BZ
28 **DEFT** Exhibit No. _____
29 Date Entered _____

30 Signature _____
31 _____

32 **USDC**
33 Case No. CV05-04943 BZ
34 **JOINT** Exhibit No. _____
35 Date Entered _____

36 Signature _____
37 _____

38 **USDC**
39 Case No. CV05-04943 BZ
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41 Date Entered _____

42 Signature _____
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44 **USDC**
45 Case No. CV05-04943 BZ
46 **PLNTF** Exhibit No. _____
47 Date Entered _____

48 Signature _____
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52 **PLNTF** Exhibit No. _____
53 Date Entered _____

54 Signature _____
55 _____

56 **USDC**
57 Case No. CV05-04943 BZ
58 **DEFT** Exhibit No. _____
59 Date Entered _____

60 Signature _____
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62 **USDC**
63 Case No. CV05-04943 BZ
64 **DEFT** Exhibit No. _____
65 Date Entered _____

66 Signature _____
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